**AMERICAN FINANCIAL SERVICES ASSOCIATION**

**LAW COMMITTEE**

PERSONAL LOAN COMMITTEE

REPORT ON RECENT DEVELOPMENTS

MARCH 4-6, 2019

1. **CFPB Proposed Revised Rule on Payday, Vehicle Title, and Certain High Cost Installment Loans**

The long anticipated proposed revised CFPB Rule on Payday, Vehicle Title, and Certain High Cost Installment Loans (the “Revised Payday Lending Rule” or the “Revised Rule”) was published in the Federal Register on February 6th, and will become effective sixty days later. The Revised Rule removes the “mandatory underwriting provisions” of the earlier final CFPB Rule on Payday, Vehicle Title, and Certain High Cost Installment Loans (the “Original Payday Lending Rule” or the “Original Rule”) that defined an unfair and abusive practice to include a failure to consider the borrower’s ability to repay a covered loan. The Revised Payday Lending Rule also eliminates sections of the Original Rule requiring lenders to furnish information to registered information systems.

Perhaps most important for AFSA member companies, the Revised Rule does not remove any of the “payment provisions” from the Original Payday Lending Rule that include certain practices with respect to a “leveraged payment mechanism” within the scope of an unfair and abusive practice. These payment provisions (along with the other various record retention and compliance requirements of the Original Rule), remain in what became an effective regulation on January 16, 2018, with a compliance date of August 19, 2019 that is currently stayed pursuant to the court order issued in *Community Financial Services Association v. CFPB*, No. 1:18-cv-00295 (W.D. Tex. Nov. 6, 2018). The Bureau comments in the Revised Rule that it has received a rulemaking petition to exempt debit card payments from the payment provisions, and has also received informal requests to exempt certain types of lenders or loan products from the Rule’s coverage and to delay the compliance date for the Payment Provisions. The Bureau intends to examine these issues and if the Bureau determines that further action is warranted, the Bureau will commence a separate rulemaking initiative (such as by issuing a request for information (RFI) or an advance notice of proposed rulemaking).

The CFPB issued a Small Entity Compliance Guide for the payment related provisions of the Original Payday Lending Rule on February 20th that provides helpful guidance for compliance if, and when lenders have to comply. This compliance guide is available at:

<https://files.consumerfinance.gov/f/documents/cfpb_payday_small-entity-compliance-guide.pdf>

1. **FDIC Request for Information on Small Dollar Lending**

The FDIC issued its Request for Information on Small Dollar Lending on November 14, 2018, seeking a response to twenty-one (21) questions on issues related to the small dollar lending market. The scope of questions raised was broad, as were the responses received from those who commented including AFSA, the Center for Responsible Lending, the Conference of State Bank Supervisors, and the Pew Charitable Trusts.

<https://www.fdic.gov/regulations/laws/federal/2018/2018-small-dollar-lending-3064-za04-c-015.pdf>

<https://www.fdic.gov/regulations/laws/federal/2018/2018-small-dollar-lending-3064-za04-c-021.pdf>

<https://www.fdic.gov/regulations/laws/federal/2018/2018-small-dollar-lending-3064-za04-c-051.pdf>

<https://www.fdic.gov/regulations/laws/federal/2018/2018-small-dollar-lending-3064-za04-c-044.pdf>

<https://www.fdic.gov/regulations/laws/federal/2018/2018-small-dollar-lending-3064-za04-c-015.pdf>

1. **ILC’s**

Square Financial Services, Inc. re-filed their application with the FDIC on December 19, 2018.

1. **CFPB Constitutionality**

*State National Bank of Big Spring v. Munchin, et al.*, No. 18-307 (U.S., *certiorari denied* 01/14/19).

*“Petitioner contends that the structure of the Bureau, including the for-cause removal restriction on its single director, violates the constitutional separation*

*of powers. That question is important, and it warrants this Court’s review in an appropriate case. This case, however, would be a poor vehicle for considering*

*the constitutionality of the Bureau’s structure because it is unlikely that the question would be considered by the full Court in this case and, even if it were, there is a substantial jurisdictional question that could prevent the Court from reaching the merits of this dispute. Further review of this case is therefore unwarranted.”*

1. **CFPB NPR on Debt Collection**

CFPB Fall 2018 Rulemaking Agenda:

*“[t]he Bureau has continued to engage in research and pre-rulemaking activities regarding the debt collection market, which remains a top source of complaints to the Bureau. The Bureau has also received encouragement from industry and consumer groups to engage in rulemaking to address how to apply the 40-year old Fair Debt Collection Practices Act (FDCPA) to modern collection practices. By March 2019, the Bureau expects to issue a Notice of Proposed Rulemaking addressing such issues as communication practices and consumer disclosures.”*